IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/03/2004

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.1047 OF 1993

Poongavanam .. Appellant

-Vs-

1. Pandurangan @ Pandu
2. Kannammal .. Respondents

This second appeal is preferred under Section 100 of CPC against the judgment and decree passed by the learned Subordinate Judge, Virudhachalam made in AS No.167 of 1990 dated 28.09.1992 partly reversing the judgment and decree of the learned Additi District Munsif, Kallakurichi made in OS No.12 of 1986 dated 30.8.1990.

!For Appellant : Mr.K.Ravichandrababu

^For Respondents: Mr.V.Raghavachari

:JUDGMENT

This second appeal is directed against the judgment of the learned Subordinate Judge, Virudhachalam, wherein the judgment of the trial court in a suit for maintenance and charge over the properties in respect of the maintenance was modified.

2. The following short facts are noticed in the pleadings of the parties:

The first plaintiff is the legally wedded wife of the first defendant. While the second plaintiff and one Rajendran are their children. The marriage took place 26 years prior to the litigation. The plaintiff was meted out cruel treatment and s as driven away. While so, the first defendant was making an attempt to dispose of the properties. He has executed a sale deed on 18.4.1986 in favour of the second defendant and also a deed of mortgage in favour of the third defendant, but without any co nsideration whatsoever and they were created only to defeat the maintenance right of the plaintiff, and hence, she has filed the suit for maintenance for a sum of Rs.200/- per month for herself and Rs.100/- per month for the second plaintiff and other re liefs.

3. Though the first defendant filed written statement, he remained ex parte at the time of trial. The second and third defendants filed written

statement stating that the sale in favour of the second defendant and the mortgage deed in favour of the d defendant had come into existence in the ordinary course of events and that they have paid consideration; that the second defendant was the bona fide purchaser and the third defendant's transaction was a bona fide one, and hence, the reliefs were to be rejected.

4. The trial court framed necessary issues, tried the suit and decreed the same granting maintenance and also creating charges over the property including that one under sale deed and the mortgage deed. Aggrieved over the same, the second and the th defendants preferred an appeal. The learned Subordinate Judge, who enquired the appeal, modified the judgment of the trial court, wherein the properties under the sale and mortgage in favour of the second and third defendants respectively were taken out of charge created by the trial court. Aggrieved, the plaintiff has brought forth this second appeal.

5. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:

1) Whether the lower appellate court erred in law in deleting the properties under Ex.A.1 and A.2 from the decree of the trial court when such transactions were made after receipt of suit summon and affected by principles of 'lis pendens'?

2) Whether the lower appellate court erred in law in deleting the items under Ex.A.1 and A.2 from the decree of trial court especially when such transfers were declared as invalid by the trial court and such finding having not been set aside by the r appellate court?

6. This Court has heard the learned counsel for the appellant and also the learned counsel for the respondents on those contentions.

7. On hearing the rival submissions and the scrutiny of the materials available, this Court is of the considered view that this appeal carries no merit. It was a suit for maintenance filed by the plaintiffs against the first defendant, husband of th rst plaintiff. The trial court has passed a decree for maintenance, which has been affirmed by the first appellate court also. It is pertinent to point out that even during the trial, the first defendant has remained ex parte and he has not challenged th e grant of maintenance in favour of the plaintiff even before the first appellate court. Thus, the suit was actually contested before the trial court only by the defendants 2 and 3, who aggrieved over the judgment of the trial court preferred the first a ppeal. The first appellate court has modified the judgment of the trial court. This second appeal has been brought forth by the aggrieved first plaintiff.

8. From the materials available and in particular the written statement filed by the first defendant before the trial court and his non appearance before the trial court at the time of trial and the fact that the husband and wife were living togethe ring the relevant period, it would be indicative of the fact that the suit was a collusive one brought by the wife at the instigation of the first defendant husband in order to defeat the rights of the defendants 2 and 3 under the sale deed and mortgage deed respectively. It is not in dispute that the first defendant executed the sale deed in favour of the second defendant on 18.4.1986 and has also executed mortgage deed in favour of the third defendant. It is also brought to the notice of the court th at apart from the landed property covered under both the documents, he is having the other immovable properties, which are shown as

item Nos.1,3 and 4 and also one acre and 15 cents in item No.2. Hence, it has to be pointed out that it is a case where th e plaintiff, in order to get the fruits of the maintenance decree, had got sufficient properties in the hands of the first defendant and it is a matter of surprise to note that the plaintiff, who could execute the decree at the properties, which are admi ttedly in the hands of the first defendant, had brought forth this second appeal.

9. It is needless to say that this is an another attempt made by the plaintiff by way of the second appeal to defeat the rights of the purchasers under the sale deed, namely the second defendant and the mortgagee under the mortgage deed, namely, the rd defendant, if possible, but in vein. As pointed out earlier, it was quite evident that it was a collusive suit by the wife at the instigation of the husband. Apart from that there are sufficient properties available in the hands of the first defendant in order to get the maintenance as per the decree passed by the trial court. Apart from that there is nothing to show that the vendor under Exs.B1 and B.2 lacks bona fide in entering into the documents. The contention of the appellant's side that it was only for the purpose of defeating the maintenance right of the plaintiff cannot be accepted, since there are sufficient propert ies in the hands of the first defendant apart from the properties covered under Exs.B.1 and B.2.
10. This Court is unable to see any merit in the second appeal. This second appeal fails and the same is dismissed, leaving the parties to bear their costs.

Index : Yes
Internet : Yes

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To
1. The Sub Court, Vridhachalam
2. The Additional District Munsif, Kallakurichi
3. The Record Keeper, VR Section,
High Court, Madras

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